

NOV 16 2005

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

V.

CRAIG ST. CLAIR,

Defendant - Appellant.

No. 02-50526

D.C. No. CR-02-00039-VAP-01

**ORDER REMANDING TO THE
DISTRICT COURT AND
DENYING THE PETITION FOR
REHEARING/PETITION FOR
REHEARING EN BANC***

Appeal from the United States District Court
for the Central District of California
Virginia A. Phillips, District Judge, Presiding

Argued and Submitted June 8, 2004
Pasadena, California

Before: TROTT, RYMER, and THOMAS, Circuit Judges.

The memorandum disposition file June 18, 2004, is hereby withdrawn.

Because it is not possible to determine whether the district court would have given Craig St. Clair a materially different sentence had it known the Sentencing

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

Guidelines are not mandatory, we remand to the district court pursuant to United States v. Ameline, 409 F.3d 1073, 1084-85 (9th Cir. 2005) (en banc).

REMANDED.

With the memorandum disposition withdrawn and order remanding this case back to the district court, the panel has voted to deny the petition for rehearing and the petition for rehearing en banc.

The full court has been advised of the petition for rehearing en banc and no judge has requested a vote on whether to rehear the matter en banc. Fed. R. App. P. 35.

The petition for panel rehearing and the petition for rehearing en banc are DENIED.

The Mandate shall file FORTHWITH.